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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 313

WALTER SELINGER,
Petitioner,

vs.

LESTER BIGLER, Special Agent of the Internal Revenue Service, et al.,
Respondent.

PETITION FOR REHEARING OF ORDER ON PETITION FOR WRIT OF CERTIORARI

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The Petitioner prays that this Court rehear the Petitioner's Petition for a Writ of Certiorari and grant a Writ of Certiorari so that the issues presented may be decided by this Court.

On October 16, 1967, this Court denied the Petitioner's Petition for a Writ of Certiorari. On the same date, the Court granted the Petition for a Writ of Certiorari in *Mathis vs. United States,* Supreme Court No. 286 Misc. In *Mathis,* the U. S. Court of Appeals for the Fifth Circuit affirmed the trial court which had admitted into evidence testimony and documents obtained by an agent of the Internal Revenue Service. The

only issue raised on the appeal to the Fifth Circuit was the application of *Miranda vs. Arizona,* 384 U.S. 436 (1966) to a criminal tax fraud case. As stated by the Court of Appeals for the Fifth Circuit:

> "On this appeal, appellant relies solely upon *Miranda v. Arizona,* 1966, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, in urging that the trial court erred in admitting into evidence the testimony and documents obtained at the two interviews because he was not on either occasion warned that he had a right to remain silent, that any statement he made might be used in evidence against him, and that he had a right to the presence of counsel." 376 Fed. 595 at 596.

In affirming the judgment of the District Court, the Fifth Circuit cited *Kohatsu vs. United States,* 351 F.2d 898, (9th Circuit 1965). This is the same decision cited by the Ninth Circuit in ruling against the Petitioner Walter Selinger in the subject dispute. Our case and the *Mathis* case both involved the issue of when the accusatory stage is reached in a criminal tax fraud investigation. At that point in time, as required by *Miranda.* the taxpayer, must be informed of his constitutional rights, including the right to the presence of counsel. Since the Supreme Court has decided to hear arguments on this issue in *Mathis,* it is urged that the Supreme Court also should hear arguments on the same basic issue in the present case.

For the foregoing reason, it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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JOHN C. KING and
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Of Counsel

I certify that, in connection with preparation of this Petition, that it is presented in good faith and not for delay and that it is restricted to intervening circumstances of substantial effect.

David R. Frazer